IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 887 OF 2005

Prakash Shantilal Doshi .. Appellant

Vs.

Narayandas Laxmandas Gujar (Deceased) Through L.Rs. and Ors. .. Respondents

Mr. R.A. Thorat with Mr. S.G. Deshmukch for appellant.
Mr. K.K. Malpathak for Respondent Nos.2,5,6,7,8 and 9.

CORAM: B.H. MARLAPALLE, J.

Date : October 07, 2005.

P.C.:

1. Heard Mr. Thorat with Mr. Deshmukh, the learned counsel for the appellant-defendant and Mr. Malpathak the learned counsel for the respondent-original plaintiff.

2. This appeal arises from the order passed by the learned First Ad-hoc Additional District Judge at Satara on 13/8/2005 rejecting the application filed under Order 41 Rule 17 of C.P.C. for non prosecution and on account of the appellant and his advocate being absent before the Lower Appellate Court.

3. The plaintiff had instituted Regular Civil Suit No.59 of 1989 in the Court of Civil Judge, Jr. Division at Khandala in respect of house property bearing Grampanchayat No.772 and CTS No.1966. The suit was decided ex parte on 6/7/2002. The defendant, therefore, filed Regular Civil Appeal No.205 of 2002 on or about 5/8/2002. It came to be dismissed in default on 21/12/2002. The appellant filed Restoration Application No.4 of 2003 and it was dismissed. He approached this court in A.O. No.973 of 2003 which was allowed by this court and the appeal came to be restored with a direction to the Lower Appellate Court to hear and decide the appeal within a period of six months from 8/12/2003. The appeal was listed thereafter for hearing on 11/6/2004, 22/9/2004 and 25/9/2004, even after the period of six months had already lapsed and on all these dates the appellant remained absent and so was the case with his advocate. On 11/7/2005 again, though the appellant's advocate Shri S.B. Deo was present before the Lower Appellate Court, he submitted an application for adjournment. It was granted and the appeal was fixed on the next day i.e. 12/7/2005. However, on 12/7/2005 the

advocate submitted one more application for adjournment stating that advocate H.R. Shinde was to attend the court at Kolhapur and, therefore, do not proceed with the arguments. The court proceeded to dismiss the appeal.

4. While considering the restoration application the applicant examined two witnesses i.e. himself and advocate Shri S.B. Deo. Their testimony has been duly taken into consideration by the Lower Appellate Court. It also noted that Regular Darkhast No.20 of 2004 was already filed by the decree holders before the learned Civil Judge, Jr. Division at Khandala and possession warrant was issued. However, the appellant had obstructed the Bailiff from discharging his duties under the orders of the court as per the report dated 15/7/2005 submitted by the Bailiff. The appellant had gone to the extent of asking one Mrs. Shobha to come forward and touch the cupboard which was being removed by the Bailiff and simultaneously he clicked the photographs of the lady with the cupboard. On the basis of those photographs he also instructed the lady to file a police case against the Bailiff.

5. It is thus clear that inspite of the order passed by this court fixing the period of six months for disposal of the appeal, during that period the appellant remained absent and even on the subsequent dates either he and his advocate remained absent or applications were filed for adjournments for no sound reasons. The appellant clearly demonstrated that he was not interested in getting the appeal decided even after the period set out by this court. In addition, he engaged in a notorious behaviour when the Bailiff went to execute the possession warrant with the help of the police. The Lower Appellate Court has rightly considered all these factors and rejected the application for restoration. No interference is called in the view taken by the Lower Appellate Court.

6. Hence, the appeal is dismissed in limine.

(B.H. Marlapalle,J.)